

## Staff Report

To: Mayor and City Council

Date: June 26, 2007

**Update: July 24, 2007**

Via: Gary Jackson, City Manager

From: Cathy D. Ball, PE, Director of Transportation and Engineering  
Chad Pierce, Stormwater Services Manager

Subject: Stormwater and Erosion Control Ordinance Revisions

Summary Statement: Staff request that the City Council review and take public comment on the Stormwater and Erosion Control Ordinance.

Review: As part of the Environmental Protection Agency's Federal Stormwater Regulations, the City of Asheville is required to meet six minimum measures in efforts to improve water quality from stormwater runoff. These measures include public education, public involvement, illicit discharge regulations, construction site and post-construction site measures and good housekeeping measures. In order to be in compliance with the Federal regulations, the City of Asheville must revise the Stormwater and Erosion Control Ordinance in the Unified Development Ordinance.

In an effort to make the ordinance more consistent and user-friendly, we recommend combining the Stormwater Ordinance and Erosion Control Ordinance into one ordinance.

A stakeholders group was formed called the Watershed Policy Committee to review and evaluate the proposed ordinance. Several members were invited to participate in this process. Due to scheduling conflicts not all members were able to attend. The active group consisted of the following people:

- Barber Melton                      Coalition of Asheville Neighborhoods
- Starr Silvis                        NC DENR
- David Herbert                    Property Owner
- Jeff Van Hartesfeld              Crowfields Condominiums
- John Broadbrooks               Landscape Architect
- Jeff Slosman                       Manufactures Association
- Bruce Tompkins                  Biltmore Village
- Hartwell Carson                  Riverlink
- Mike Goodson                    Buncombe County

The group reviewed thirteen decision points and made recommendations for each. The group had full consensus on all issues with the exception of buffers. The group was equally split on the required width of the buffers.

At the June 6, 2007 Planning and Zoning Commission Meeting, the Commission approved the recommended changes, with a recommended buffer width of 50 feet on all jurisdictional waters.

Staff met with the Council of Independent Business Owners on June 8, 2007, the Coalition of Asheville Neighborhoods on June 11 and a joint group of the North Carolina Home Builders Association and the Asheville Board of Realtors on June 21, 2007.

Pros:

- The implementation of these regulations will improve water quality.
- The Stormwater and Erosion Control Ordinances have been consolidated. This should make the ordinance more user-friendly.
- These changes meet the goals and objectives of the 2025 plan.
- The City of Asheville will be in compliance with the Federal Stormwater Mandate and the North Carolina Sediment and Erosion Control Law.

Pro and Con:

- Ordinance provides for increased fines and penalties.

Con:

- In some cases, these changes will increase development costs.

**Since the June 26, 2007 meeting, staff has held a public meeting inviting river property owners, the River Design Review Committee and the general public. This meeting was held on July 19, 2007. Staff also met with the Greenway Commission at their regular meeting on July 12<sup>th</sup> and the City Manager's Panel on Development Process on July 11<sup>th</sup>.**

**After reviewing the options for buffers, staff is recommending a 50 foot undisturbed buffer be required on all jurisdictional streams. The first thirty feet (Zone A) would be limited to no built-upon area as mandated by the State. The remaining twenty feet (Zone B) would allow greenways as a use by right in addition to a ten percent encroachment for any purpose.**

**Staff will be prepared to answer additional questions at the July 24, 2007, public hearing.**

Recommendation: Staff requests that the City Council adopt the revised Stormwater and Erosion Control Ordinance along with the revised definitions and enforcement regulations.

Attachments:

- 1) Ordinance
- 2) Questions and Answers

## **Stormwater Ordinance Follow-Up Questions and Answers**

**1. Is the proposed ordinance inconsistent with the Wilma Dykeman Riverway Plan?**

No. The Swannanoa and the French Broad River have a River Resource Yard that cannot be disturbed without approval from the River Design Review Committee. The width of this buffer is fifty feet. Additionally, the floodway along the Riverway plan is more than fifty feet in most locations and currently cannot be built upon.

**2. How do the revised Floodplain Maps affect this ordinance?**

It does not. It will define the limitations of development based on the floodplain ordinance but unrelated to the Stormwater and Erosion Control Ordinance.

**3. Are there existing buffer requirements in place now?**

Yes. The River Resource Yard is fifty feet for the Swannanoa River, French Broad River and Hominy Creek. The North Carolina Department of Natural Resources, Land Quality Division has buffer requirements that vary depending on the natural slope of the land adjacent to the stream or lake.

**4. Can we vary the buffer width based on the zoning of the property?**

Yes. We would recommend that the minimum buffer width be fifty feet and an additional width for more densely zoned property.

**5. Can we require the contractors to install double silt fences?**

Yes. We currently require this in areas where staff determines that it is necessary based on the concentration of run-off.

**6. Can we limit the applicant's ability to do work in the City if they are repeat offenders?**

Yes. Our existing ordinance would allow us to disapprove permits for applicants with repeat violations. We must obtain approval from the Director of the Land Quality Division of the North Carolina Department of Natural Resources. We may be able to publish repeat offenders in the newspaper.

**7. Is the Greenway Commission aware of the proposed regulations?**

Yes. Staff met with the Greenway Commission at their regular meeting on July 12, 2007.

**8. How does the ordinance impact affordable housing?**

In general, it will have an impact on construction costs for all types of development. Most of this cost is attributed to the mandatory requirements of the State.

**9. Can we provide on-call services during the night and weekend?**

Currently, Public Works has a duty officer on call. They can clean the road and bill the owner for the full cost of doing so.

ORDINANCE NO. \_\_\_\_\_

ORDINANCE AMENDING CHAPTER 7 OF THE UNIFIED DEVELOPMENT  
REGULATIONS PERTAINING TO ENVIRONMENTAL PROTECTION STANDARDS OF  
THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

**Section 1:** Section 7-12-2 (Soil Erosion and Sedimentation Control) of Chapter 7 of the Unified Development Regulations of the Code of Ordinances of the City of Asheville is hereby repealed in its entirety.

**Section 2:** Section 7-12-5 (Stormwater Management) of Chapter 7 of the Unified Development Regulations of the Code of Ordinances of the City of Asheville is hereby repealed in its entirety.

**Section 3:** That a new section 7-12-2 entitled “*Stormwater, Soil Erosion and Sedimentation Control, Illicit Discharge and Connection Ordinance*,” be inserted as follows:

**(a) Authority, Purpose, Objective, Findings, Jurisdiction, Applicability, Exemptions:**

(1) **Authority:** This section is adopted pursuant to NCGS §143-214.7 and active rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; Chapter 160A (Cities and Towns), Article 14, Section 5 of the North Carolina Constitution; Chapter 113A, Article 4 (Sedimentation Pollution Control); Article 21, Part 6 (Floodway Regulations); and Chapter 160A, Article 19 (Planning and Regulation of Development).

(2) **Purpose:** It is the purpose of this section to comply with the federal and corresponding state stormwater discharge National Pollution Discharge Elimination System (NPDES) regulations; to protect, maintain and enhance the environment of the City of Asheville by establishing minimum requirements and procedures to control the potential adverse effects of increased stormwater runoff associated with both future development and existing developed land and non-point and point source pollution associated with new development and redevelopment as well as illicit discharges into municipal stormwater systems; to regulate the clearing, grading, excavation, filling and manipulation of the earth and the moving and storing of waters in order to control and prevent and control accelerated soil erosion and sedimentation; and to establish decision making processes for development that protect the integrity of watersheds and preserve the health of water resources.

(3) **Objectives:** To assure the City of Asheville of the authority to take any action required by it to obtain and comply with its NPDES permit for stormwater discharges. Among other things, these regulations require the City of Asheville to establish legal authority which authorizes or enables the City of Asheville at a minimum to:

a. Control the contribution of pollutants to the City of Asheville MS4 and receiving waters by stormwater discharges associated with residential, commercial, industrial, and related facilities activity and the quality of stormwater discharged from sites of residential, commercial, industrial, and related facilities activity; and

b. Prohibit illicit discharges and illicit connections to the City of Asheville MS4 and receiving waters; and

- c. Control, the discharge, to the City of Asheville MS4 and receiving waters, of spills, dumping or disposal of materials other than stormwater; and
- d. Control, through intergovernmental agreements, contribution of pollutants from one municipal stormwater system to another; and
- e. Control accelerated erosion and sedimentation
- f. Require compliance with conditions in ordinances, permits, contracts or orders:
  - 1. To establish and implement all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges and illicit connections to the City of Asheville MS4 and receiving waters;
  - 2. To require that new development and redevelopment maintain the pre-development hydrologic response in their post-development state as nearly as practicable for the applicable design storm in order to reduce flooding, stream bank erosion, non-point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats for biological/ecological function and drainage;
  - 3. To encourage the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of green space and other conservation areas to the MEP;
  - 4. To establish provisions for the short-term and long-term responsibility for and maintenance of structural and non-structural stormwater BMPs to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety; and to minimize public and private property damage resulting from erosion, sedimentation and flooding; and to regulate developments that create demand for public investment in flood control works.

(4) Findings:

- a. Stormwater runoff can have significant adverse impacts on the health, safety and general welfare of the City of Asheville and on the quality of life of its citizens. These impacts can be in the form of pollution to our water bodies, erosion and sedimentation, flooding and other degrading impacts.
- b. The sedimentation of streams, lakes, wetlands and other waters of this state constitute a major pollution problem. Sedimentation occurs from the erosion or depositing of soil and other materials into the waters. Control of erosion and sedimentation is deemed vital to the public interest and necessary to public health, welfare, and expenditures of funds for erosion and sedimentation control programs shall be deemed for a public purpose.
- c. Changes in land use can create adverse impacts. The City of Asheville has been designated a Phase II Municipal Separate Storm Sewer System (MS4) community under the National Pollutant Discharge Elimination System (NPDES) and is required to obtain a permit pursuant to the 1972 Federal Water Pollution control Act as amended in 1987 as well as the active rules statutory provisions promulgated thereunder. In response to these requirements this

jurisdiction is compelled to adopt minimum stormwater controls such as those included in this section.

d. The City of Asheville is in a unique geographic area with steep slopes, highly erodible soils, extreme rainfall patterns and other unique factors that require special attention and specifically different requirements from other jurisdictions.

(5) Jurisdiction: This section shall apply to territorial and extraterritorial jurisdictions of the City of Asheville as well as to all properties owned by the City of Asheville within Buncombe County. The provisions of this section shall apply within the areas designated on the map titled “Phase II Stormwater Map of the City of Asheville, North Carolina” (“the Stormwater Map”), which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompanies and is hereby made a part of this section.

(6) Applicability: Beginning with and subsequent to its effective date, this section shall be applicable to all development and redevelopment, including, but not limited to, site plan applications, subdivision applications, and land disturbing applications, as described below unless exempt pursuant to subsection 7-12-2(a)(7).

a. All requirements of this section shall be applicable to development and redevelopment that cumulatively disturbs less than one acre and will have a proposed impervious surface area on completion of development of fifty percent or less of the total acreage of the development tract, except subsection 7-12-2(g).

b. All requirements of this section shall be applicable to development and redevelopment that cumulatively disturbs one acre or more and/or development and redevelopment having a proposed impervious surface area on completion of development of greater than fifty percent of the total acreage of the development tract. (this is confusing, is there anyway this can be made clearer?)

c. For the Purpose of Prohibition, Detection and Elimination of Illicit Connections, Illicit Discharges and Improper Disposal to the Stormwater System, the provisions of subsection 7-12-2(i) shall apply to all properties, lands, City of Asheville’s separate storm sewer system (MS4) and waters of the state within the territorial and extraterritorial jurisdictions of the City of Asheville as well as to all properties owned by the City of Asheville within Buncombe County.

(7) Exemptions: The following activities for land disturbance shall be exempt from provisions of subsection 7-12-2(h):

a. An activity, including breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including but not limited to: forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts, dairy animals and dairy products, poultry and poultry products, livestock, including beef cattle, sheep swine, horses, ponies, mules, and goats, bees and apiary products, fur producing animals.

b. An Activity undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the Department. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines

Related to Water Quality, the provisions of this section shall apply to such activity and any related land-disturbing activity on the tract.

c. An activity for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.

d. Land-disturbing activities conducted by the State of North Carolina; by the United States; by persons having the power of eminent domain; by local governments; or activities which are licensed or bonded, in whole or in part, by the State of North Carolina or the United States; all of which are under the exclusive regulatory jurisdiction of the State of North Carolina.

e. An activity which is essential to protect human life during an emergency.

f. Those done for the purpose of fighting fires;

g. The stock-piling of fill dirt, raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off-site damage;

h. Individual gravesites;

i. Lawns, gardens, and similar horticultural activities.

j. Redevelopment that has a net reduction in impervious surface area on completion of development shall be exempt from the provisions for water quantity control as indicated in subsection 7-12-2(g)(1).

k. Developments and/or redevelopments that disturbs less than one acre are not exempt if such activities are part of a larger common plan of development or sale, even though multiple, separate or distinct activities take place at different times on different schedules.

l. Development and/or redevelopment of a single one (1) or two (2) family home structure that cumulatively disturbs less than one acre and is not part of a larger common plan of development or sale but will have a proposed impervious surface area on completion of development greater than fifty percent of the total acreage of the development tract shall be exempt from provisions of subsection 7-12-2(g).

m. Activities that are exempt from the permit requirements of Section 404 of the Federal CWA, as specified in 40 CFR 302 (primarily, ongoing farming and forestry activities) are exempt from the provisions of subsection 7-12-2(g).

\*NOTE-Paragraphs (8) and (9) added to the end.

**(b) Administration.**

(1) *Stormwater Administrator*: The City Council of the City of Asheville hereby authorizes the City Manager or his/her designee to designate and appoint to the extent possible, within the existing ranks of the employment roll of the City, a Stormwater Administrator to administer and enforce all provisions of this section. In addition to all other customary and incidental powers of the office of Stormwater Administrator as well as the powers and duties that maybe

conferred by other ordinances of the City and other applicable laws, statutes, rules and regulations, the Stormwater Administrator shall be responsible for:

- a. Day to day coordination, implementation and enforcement of this section and the SWMP. This includes but is not limited to, the SWMP's monitoring program and the SWMP's stormwater management programs for commercial and residential activities, construction site runoff, industrial and related facilities, and illicit discharges and improper disposal.
- b. The coordination and enforcement of the provisions of this section, the City of Asheville Stormwater Program, and the City of Asheville's NPDES Permit as well as to make determinations and render interpretations; to review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this section; to establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the City of Asheville on applications for development or redevelopment approvals.
- c. For applications required under this Code, the compilation of application requirements, submission schedule, fee schedule, a copy of this section, and information on how and where to obtain the Stormwater Management Design Manual, which shall be made available to the public.
- d. The Stormwater Administrator shall develop and maintain a Stormwater Management Design Manual, (SWM Design Manual) in accordance with the approved City of Asheville Stormwater Management Program (SWMP). The SWM Design Manual shall serve as guidance for permitting, design, construction, and maintenance of facilities which discharge stormwater both during construction and post-construction. See subsection of this section for a detailed description of the contents of the SWM Design Manual.
- e. Establishment of proposed permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may recommend amending the fees and policies from time to time, subject to City Council approval.
- f. The Stormwater Administrator shall coordinate the City's activities with other federal, state, and local agencies, which manage and perform functions relating to the protection of receiving waters. Authority not expressly reserved for other agencies or restricted by statute is placed with the Stormwater Administrator for the protection and preservation of receiving waters.
- g. The City Manager may authorize upon recommendation of the Stormwater Administrator entering into agreements with other governmental and private entities to carry out the purposes of this subsection. These agreements may include, but are not limited to enforcement, resolution of disputes, cooperative monitoring, and cooperative management of stormwater systems and cooperative implementation of stormwater management programs.

**(c) Requirements and Process for Compliance:**

**(1) General requirements**



a. *Protection of property.* Persons conducting development or redevelopment and associated land-disturbing activity shall take all reasonable measures to protect natural resources and all public and private property from damage caused by such activity.

b. *Flood protection.* No grading and stormwater permit shall be issued for development or redevelopment and associated land-disturbing activity in the regulated floodplain prior to meeting all floodplain regulations. See section 7-12-1 of this chapter.

c. *Tree protection.* Trees to be preserved on the site shall be protected from construction activities in accordance with the provisions set forth in subsection 7-11-2(c) of this chapter.

(2) *Approved Plan and Permit.* An approved plan and a grading and stormwater permit shall govern the design, installation, and construction of erosion and sediment control and stormwater management and control practices and measures on the site for both “during construction” and “post-construction”.

a. It shall constitute a violation of the provisions of section 7-12-2 for any person, required by these provisions to obtain an approved plan and permit, to engage in such activity without the required approved plan and permit.

b. An approved plan and a grading and stormwater permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to the requirements of this section.

c. The approved plan and permit does not continue in existence indefinitely after the completion of the project, rather, compliance after project construction is assured by the maintenance provisions of this section.

d. The approved plan and permit remains valid for one year after the date of approval. Extensions or renewals of the plan approvals may be granted by the Stormwater Administrator upon written request by the person responsible for the land disturbing activity.

(3) *Permit Application.* A permit application is required for all development and redevelopment unless exempt pursuant to this section. The permit application is intended to provide a mechanism for the review, approval, and inspection of the practices and measures for erosion, sediment and stormwater management and control. At a minimum the permit application package shall include, an application form, a design plan, appropriate fees and a statement of Financial Responsibility and Ownership. Depending on the scope of the development, re-development or land disturbing activity, additional items may be required with the permit application submittal. These additional items may include, but are not limited to, design calculations, Certificate of Inspection Agreements, approved encroachment agreements, easements, approved permits from other local, state or federal agencies. The permit application process shall be as follows:

a. All permit applications required pursuant to this section shall be submitted by the land owner or the land owner’s duly authorized agent.

b. A permit application shall be considered complete only when it contains all elements of an application, along with the appropriate fee. If the Stormwater Administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. However, the submittal of an

incomplete application shall not suffice to meet a deadline or start the time allotted for review nor shall the time limit for review shall not begin until a complete permit application has been submitted.

c. Any permit application submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (N.C. Gen. Stat. sec. 113A-1 et seq.) shall be deemed incomplete until a complete environmental document is available for review. The City shall promptly notify the person submitting the permit application that the permit application is in completed and review will not begin until the environmental document is submitted for review.

d. All permit applications shall be filed with the Stormwater Administrator at least 30 days prior to the commencement of the proposed land disturbing activity.

(4) *Design Plans.* A design plan shall be submitted with the permit application for all land disturbing activity, unless exempt pursuant to this section. Following are the minimum design plan requirements:

a. For proposed land disturbances of less than ten-thousand square feet, three copies of a simplified design plan referenced as a sketch plan must be submitted. At a minimum the sketch plan shall include the information listed in the SWM Design Manual on the form titled "Requirements for Non Formal Sketch Plans".

b. For proposed development, redevelopment or land disturbance activity with a proposed disturbance area of ten-thousand square feet but which is exempt from the post construction stormwater control provisions of subsection 7-12-2(g), a formal design plan shall be submitted. Three copies of the design plan shall be submitted and at a minimum shall include the information listed in the SWM Design Manual on the form titled "Requirements for Formal Grading / Erosion Plans".

c. For proposed development, redevelopment or land disturbance activity that is required to meet the post construction stormwater control provisions of subsection 7-12-2(g), a formal design plan shall be submitted. Four copies of the design plan shall be submitted and at a minimum shall include the information required in b. above and as listed in the SWM Design Manual on the form titled "Requirements for Stormwater Plans".

(5) *Certification of Design Plan.* All design plans required to comply with the post construction stormwater control provisions of subsection 7-12-2(g), shall be prepared by a qualified registered North Carolina professional engineer or landscape architect, and the professional shall perform services only in their area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete permit applications, that the designs and plans are sufficient to comply with applicable standards and that the design and plans ensure compliance with this section.

(6) *Financial Responsibility and Ownership.* Grading and Stormwater Permits may be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of (1) the person financially responsible, (2) the owner of the land, and (3) any registered agents. If the person financially responsible is not a

resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with the Grading and Stormwater Permit, this section, rules or orders adopted or issued pursuant to this section. If the applicant is not the owner of the land to be disturbed, the permit application must include the owner's written consent for the applicant to submit a permit application and to conduct the anticipated, development, redevelopment or land-disturbing activity.

(7) Review and Approval:

a. *Timeline for Review of permit applications.* The Stormwater Administrator, will review each complete permit application submitted to them and within 30 days of receipt thereof, except for a permit application requiring a sketch plan, which shall be reviewed within 15 days of receipt. The Stormwater Administrator will notify the person submitting the permit application that it has been approved, approved with conditions, approved with performance reservations, or disapproved. Failure to approve, approve with modifications, or disapprove a complete permit application within 30 days of receipt shall be deemed approval. The Stormwater Administrator, will review each revised permit application submitted to them and within 15 days of receipt thereof, will notify the person submitting the permit application that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Failure to approve, approve with modifications, or disapprove a revised permit application within 15 days of receipt shall be deemed approved.

b. *Approval.* If the Stormwater Administrator finds that the permit application complies with the standards of this section, the Stormwater Administrator shall approve the application. The Stormwater Administrator may impose conditions of approval as needed to ensure compliance with this section, or other local, state or federal regulations. The conditions shall be included as part of the approval.

c. *Disapproval for Content.* The Stormwater Administrator, shall disapprove a permit application if it is found that the application fails to comply with the standards of this section, the Stormwater Administrator shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.

d. *Failure to Recognize.* Failure of the Stormwater Administrator to observe or recognize hazardous conditions or failure to disapprove the permit application shall not relieve the owner from responsibility for the conditions or damages resulting there from and shall not result in the City, its officers or employees, being responsible for the damages resulting there from.

e. *Other Disapprovals.* The Stormwater Administrator may disapprove a permit application if implementation of the permit application would result in a violation of the rules adopted by the Environmental Management Commission (Commission) to protect riparian buffers along surface waters. In the event that a permit application is disapproved pursuant to this subsection, the City shall notify the Director of the Division of Land Resources (DLR) of the Department of Environment and Natural Resources (DENR) of such disapproval within ten (10) days. The City shall advise the applicant and the Director of the DLR of the DENR in writing as to the specific reasons that the Plan was disapproved. A permit application maybe disapproved upon finding that an applicant, or a parent, subsidiary, or other affiliate of the applicant:

1. Is conducting or has conducted development, redevelopment or land-disturbing activity

without an approved Plan, or has received notice of violation of an approved plan and grading and stormwater permit previously approved by the Commission or a local government pursuant to the Sedimentation Pollution Control Act (Act) and has not complied with the notice within the time specified in the notice;

2. Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time the payment is due.

3. Has been convicted of a misdemeanor pursuant to G. S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act or; (For purposes of this subsection, an applicant's record may be considered for only the two years prior to the application date).

4. Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to the Act.

f. *Revised Application* If a revised permit application is not re-submitted within one hundred eighty (180) calendar days from the date the applicant was notified of the disapproval, the permit application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee.

g. *Preconstruction Conference*. When deemed necessary by the Stormwater Administrator a preconstruction conference may be required.

h. *Notice of Activity Initiation*. No person may initiate a land disturbing activity before:

1. Notifying the Stormwater Administrator of the date that land disturbing activity will begin.

2. Installing the erosion control measures which are required for the initial stage of land disturbance per the approved plan and having the control measures inspected and a compliance report filed by a contracted inspector or City inspector.

i. *Display of Approved Plan and Permit*. The approved plan and grading and stormwater permit must be kept on file at the job site until the job is stabilized and completed. The Design Plan shall not be considered approved without the inclusion of an approval stamp with a signature and date on the plans by the Stormwater Administrator. The stamp of approval on the plans is solely acknowledgment of satisfactory compliance with the requirements of these representations or warranty to the applicant or any other person concerning the safety, appropriateness or effectiveness of any provision, or omission from the design plan.

j. *Required Revisions*. After approving a permit application, if the Stormwater Administrator, either upon review of such permit application or on inspection of the job site, determines that a significant risk of accelerated erosion, off-site sedimentation, or risk of damage due to stormwater flows exists the Stormwater Administrator shall require a revised permit application. Pending the preparation of the revised permit application, work shall cease or shall may continue under conditions outlined by the appropriate authority. If following commencement of a land-disturbing activity pursuant to an approved permit application, the Stormwater Administrator determines that the permit application is inadequate to meet the

requirements of this ordinance section, the Stormwater Administrator may require any revisions to the permit application that are necessary to comply with this section.

k. *Amendment to a Plan.* Applications for amendment of a permit application in written and/or graphic form may be made at any time under the same conditions as the original permit application. Until such time as said amendment is approved by the Stormwater Administrator, the land-disturbing activity shall not proceed except in accordance with the permit application as originally approved. The review process for the amendment shall be the same as for a new permit application submittal.

l. *Release of Building Permits.* The director of Building Safety shall not issue any building permits for projects on sites where a grading and stormwater permit is required unless and until the grading and stormwater permit has been issued.

m. *Other Agency Notifications.*

1. Upon receipt of a permit application for proposed land disturbance of 1 acre or greater, the Stormwater Administrator will forward, as required, one copy of the design plan to the Buncombe County Soil and Water Conservation District ("district") for its review. The district shall review the design plan and submit its comments and recommendations to the city within 20 days after the district received design plan. Failure of the district to submit its comments and recommendations to the Stormwater Administrator within the prescribed time shall not delay final action on the permit application by the Stormwater Administrator.

2. Upon receipt of a permit application for proposed land disturbance of 1 acre or greater, the Stormwater Administrator will send a notification of the proposed project to the regional office of North Carolina Department of Natural Resources – Division Water Quality and to the Buncombe County Metropolitan Sewage District. The notification shall include the applicants name and contact information and the proposed site location.

**(d) Permit Appeals and Variances:**

(1) Appeals:

a. The disapproval or modification of any proposed erosion and sedimentation control plan by the Stormwater Administrator shall entitle the person submitting the plan to a public hearing as follows:

1. Stormwater Appeals: To the extent, the disapproval or modification is based upon subsection \_\_\_\_\_ herein, the person may appeal to the Asheville Board of Adjustment (Board) within fifteen (15) days after receipt of written notice of the disapproval or modification, in accordance with and pursuant to the written requirements of the Board and Section 7-6-2 of the City's Unified Development Code.

2. The hearing conducted by the Board shall be conducted in the nature of a quasi-judicial proceeding with all findings of fact supported by competent, material evidence. In the absence of an appeal to the Board, the decision of the Stormwater Administrator shall be final. The Board may reverse or affirm, wholly or partly, or may modify the decision being appealed from along with the associated findings made therein to support the decision. To this end, the Board shall have all the powers of the Stormwater Administrator from whom

the appeal is taken. The decision of the Board shall be filed in the office of the Stormwater Administrator with delivery of a written copy thereof to the aggrieved party along with a copy to may be requested by the appellant or to any other person filling a written request for such copy with the Board at the time of the hearing of the case. The decision of the Board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail returned receipt requested.

4. Appeals from the Board. Every decision of the Board shall be subject to Superior Court review by proceedings in the nature of certiorari. Petition for review by the Superior Court shall be filed with the Clerk of Superior Court within thirty (30) days after the decision of the Committee is filed in the office of the Board of Adjustment or after a written copy thereof is delivered to every person who has filed a written request for such copy with the Board at the time of its hearing of the case, whichever is later. The appeal shall be limited to the record before the Board.

5. Soil Erosion Appeals: To the extent the disapproval or modification of any proposed erosion and sedimentation control plan by the Stormwater Administrator was made pursuant to subsection \_\_\_\_\_ herein, the person submitting the plan is entitled to a public hearing as follows:

6. Erosion Control Plan Review Committee: The person shall submit written demand for a public hearing to the Secretary to the City's Erosion Control Plan Review Committee (Committee) within fifteen (15) days after receipt of written notice of the disapproval or modification. The City's Erosion Control Plan Review Committee shall be composed of the City Manager/designee, the Planning and Development Director and the Chief Building Inspector. The Secretary to the Committee shall be the same person who serves as the Secretary to the City Manager.

7. Recommendation to City Council: The Committee shall hold the hearing within thirty (30) working days after the receipt of a request for a hearing and shall make recommendations to the Asheville City Council within ten days after the date of the hearing.

8. City Council Final Decision: The Asheville City Council shall render its final decision within 15 days of receipt of the recommendations from the Committee conducting the hearing:

9. Appeal to N.C. Commission: The person shall have 15 days following the final decision of the Asheville City Council to appeal that decision to the North Carolina Sedimentation Commission (Commission) pursuant to N.C. Gen. Stat. sec. 113-A-61(c) and Title 15, NCAC 4B.0018(b).

10. Initial hearing before Commission: Appeals to the Commission shall first be heard by employees of the North Carolina Department of Environment, Health, and Natural Resources (NCDEHNR) responsible for hearing appeals from the disapproval or modification of formal plans by local governments. The decision of an employee of NCDEHNR who has heard an appeal of a local government action disapproving or modifying a formal plan may be appealed to the erosion plan control review committee of the Commission. Further judicial review of the final action of the erosion plan control review committee of the Commission shall be to the Superior Court of Buncombe County.

b. *Other Appeals*

1. **Penalty Assessments:** Civil Penalty Assessment Appeals shall follow the procedures as outlined in Section 7-18-2 of the City's Unified Development Code.

2. In the event that a Plan is disapproved pursuant to subsection 7-12-2(C)(7)e. of this ordinance, the applicant may appeal the Stormwater Administrator's disapproval of the Plan directly to the Commission.

3. Appeals of revocation of building permits by the director of building safety, when such revocation of permit is made pursuant to N.C. Gen. Stat. sec. 160A-422, shall be made to the Commissioner of Insurance or other official specified in N.C. Gen. Stat. sec. 143-139, by filing a written notice with the North Carolina Commissioner of Insurance and with the city's building safety department within ten days after the revocation of the building permit. Further appeals may be taken to the state building code council or to the courts as provided by law, all pursuant to N.C. Gen. Stat. sec 160A-434, governing appeal of decisions by building inspection departments.

(2) *Variances:* The Stormwater Administrator may recommend to the Board of Adjustment that a variance be granted from the requirements of this section if exceptional circumstances applicable to a site exist such that strict adherence to the provisions of this section will result in unnecessary hardship and will not fulfill the intent of the section and shall otherwise comply with all of the requirements for a variance as required by the entity responsible for granting such variance. Any aggrieved person may petition for a variance granting permission to use one's land in a manner otherwise prohibited by this section. All of the procedural requirements of the entity charged with granting a variance shall be met by the applicant. To qualify for a variance, the petitioner must show all of the following:

- a. Unnecessary hardships would result from strict application of this section.
- b. The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
- c. The hardships did not result from actions taken by the petitioner.
- d. The requested variance is consistent with the spirit, purpose, and intent of this Ordinance; will secure public safety and welfare; and will preserve substantial justice.

(e) **Permit Close Out and Release Requirements**

(1) *Permit Close Out:* For all development, redevelopment and land disturbing, which requires a grading and stormwater permit pursuant to the provisions of this section, no certificate of compliance or occupancy shall be issued by the City without a final release of the grading and stormwater permit by the Stormwater Administrator, except where multiple units are served by a single grading and stormwater permit, in which case the City may elect to withhold a percentage of permits or certificates of occupancy until. A final release of the shall occur before the release of any required performance securities.

(2) *Final Release Requirements:*

a. *Final Inspection:* The Stormwater Administrator shall verify that all disturbed areas have been stabilized, that all permanent erosion control measures and stormwater management BMPs, facilities and improvements have been installed per the approved design plan, as-built record drawing and requirements set forth in the SWM Design Manual.

b. *As-Built Record Drawings:* For all development, redevelopment and land disturbing activity, which require stormwater management BMPs, facilities, conveyances and related improvements, an As-Built Record Drawing must be submitted and approved by the Stormwater Administrator. The As-Built Record Drawing shall be certified, signed and sealed by a registered professional. Requirements for the As-Built Record Drawing and submittal can be found in the SWM Design Manual.

c. *Engineer, Owner, and Contractor Certifications:* For all development, redevelopment and land disturbing activity, which require stormwater management BMPs, facilities, conveyances and related improvements, certificates of completion from the Engineer, Property Owner / Developer and Contractor must be submitted and approved by the Stormwater Administrator. The certificates serve to certify that all that all facilities and improvements have been constructed and installed per the approved design plan, as-built record drawing and requirements set forth in the SWM Design Manual. Certificate of Completion forms shall be furnished by the Stormwater Administrator.

d. *Operation and Maintenance Agreement:* For all development, redevelopment and land disturbing activity, which require stormwater control management facilities or structural / non structural BMPs, an Operation and Maintenance Agreement must be submitted, approved and executed by the Stormwater Administrator. Standardized Operation and Maintenance Agreement forms shall be furnished by the Stormwater Administrator. For specifics and requirements of the Operation and Maintenance Agreement, see subsection\_\_\_\_\_

e. *Slope Stability Certifications:* For development, redevelopment and land disturbing activity, which requires Slope Stability Certificates per the provisions of this section, Slope Stability Certificates must be submitted and approved by the Stormwater Administrator

f. *Impervious Area Certifications::* For development, redevelopment and land disturbing activity, which permanently changes the amount of impervious surface area on a tract, an Impervious Area Certification must be submitted and approved by the Stormwater Administrator. The Impervious Area Certificate shall certify the amount of impervious surface area on the tract. Standardized Impervious Area Certificates forms shall be furnished by the Stormwater Administrator.

g. *Other requirements:* Depending on the scope of the , redevelopment and land disturbing activity other items may be required for final approval. These may include but are not limited to easements, plats, financial securities for maintenance.

## **(f) Erosion Prevention and Sediment Control**

### **(1) Basic Control Objectives**

An erosion and sedimentation control plan shall be disapproved if the plan fails to address the basic control objectives: The basic control objectives which are to be considered in developing and implementing an erosion and sedimentation control plan are:



a. *Identify critical areas.* On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention;

b. *Limit time of exposure.* All land-disturbing activities are to be planned and conducted to limit exposure to the shortest feasible time;

c. *Limit exposed areas.* All land-disturbing activities are to be planned and conducted to limit the size of the area to be exposed at any one time;

d. *Control surface water.* Surface water runoff originating upgradient of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure;

e. *Control sedimentation.* All land-disturbing activities shall be planned and conducted so as to prevent off-site sedimentation damage; and

f. *Manage stormwater runoff.* When the increase in the velocity of stormwater runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans must include measures to control the velocity to the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

(2) *Mandatory Standards for Land Disturbing Activity:*

No land disturbing activity subject to the control of this section shall be undertaken except in accordance with the following mandatory standards:

a. *Aquatic Buffers*

1. Undisturbed Buffer Zone - No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to jurisdictional perennial or intermittent surface waters unless an undisturbed buffer zone is provided along the margin of the watercourse. The undisturbed buffer zone shall be 30 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, the Stormwater Administrator may approve plans which include land-disturbing within the undisturbed buffer zone, given that a hardship is proven or when the duration of the disturbance would be temporary and the extent of disturbance would be minimal.

(i.) This subsection shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

(ii.) The width of the undisturbed buffer required to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity shall be determined using the guidelines provided in *The North Carolina Erosion and Sediment Control Planning and Design Manual*.

(iii.) Where a temporary and minimal disturbance has been permitted as an exception to the undisturbed buffer, land-disturbing activities in the undisturbed buffer zone shall be limited to a maximum of ten percent (10%) of the total length of the buffer zone within the tract to be disturbed such that there is not more than 100 linear feet of disturbance in

each 1000 linear feet of buffer zone. Larger areas may be disturbed with the written approval from the Stormwater Administrator, in cases where a hardship can be proven.

(iv.) The width of the undisturbed buffer zone is measured horizontally from the top of bank to the landward side of the watercourse.

(v.) Removal of invasive species, undergrowth and selective thinning of trees smaller than four inches is allowed within the undisturbed buffer zone, with the approval of the Stormwater Administrator.

(vi.) No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters, as classified by the Environmental Management Commission that will cause adverse temperature fluctuations in the trout waters, as set forth in 15 NCAC 2B.0211 "Fresh surface Water Classification and Standards."

2. Managed Buffer Zone – In addition to the required undisturbed buffer zone a managed buffer zone shall also be applied to jurisdictional perennial or intermittent surface waters. The managed buffer zone shall be an area 20 feet wide of restricted land disturbance along the margin of the watercourse.

(i.) This subsection shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

(ii.) If the required width of the undisturbed buffer zone is greater than the minimum of 30 feet, the width of the managed buffer zone shall be reduced by the same amount in which the undisturbed buffer zone is required to be increased beyond the minimum 30 feet.

(iii.) Land disturbance within the managed buffer zone shall be limited to that necessary to construct surfaces, infrastructure and structures as allowed in subsection 7-12-2\_\_\_\_\_

(iv.) The width of the managed buffer zone is measured horizontally beginning 30 feet landward from the top of bank to the nearest edge of the land disturbing activity.

(v.) Removal of invasive species, undergrowth and selective thinning of trees smaller than four inches is allowed within the managed buffer zone.

3. No grading or other land-disturbing activity may occur within the River Resource Corridor, as defined in section 7-2-5 of this chapter, of the French Broad River, the Swannanoa River, or Hominy Creek, in order to preserve existing vegetation whose roots hold the soil in place and help prevent riverbank erosion. Removal of undergrowth and selective thinning of trees smaller than four inches is allowed, with the approval of the planning and development director. More extensive removal of trees in the buffer is allowed only in areas designated as view corridors by the Riverfront Plan or by other master plans approved by the city, or where existing vegetation is damaged or diseased. Any riverbank stabilization activities should use bioengineering methods such as riprap, logs, and/or vegetation, rather than concrete walls. These provisions restricting land disturbance and removal of vegetation shall not apply to activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse or

work done for the purposes of creating trails, walkways, river access areas, and similar facilities along the rivers, creeks or streams.

4. For substantial improvements on parcels that have previously been developed the undisturbed buffer zone, managed buffer zone and/or River Resource Corridor must be re-established by removing built upon areas from the aquatic buffer zones and by planting and landscaping the aquatic buffer zones per landscape requirements as set forth in this chapter.

b. *Graded slopes and fills.*

1. The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 14 calendar days of completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion. The angle for graded slopes and fills must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints. The use of gunite or similar materials is not allowed as a method for slope stabilization.

2. Terracing or slope breaks should be used on steep slopes to reduce the length of cut and fill slopes to prevent erosion and formation of gullies. Benches should be five (5) feet wide, rounded at the edges, and spaced according to the following table:

Slope	Spacing
50% (2:1)	20 vertical feet
33% (3:1)	35 vertical feet
25% (4:1)	45 vertical feet

3. All fill slopes shall be compacted full depth to not less than ninety-five percent (95%) maximum density (Standard Proctor), shall be placed on a surface cleared of growth and debris, and be properly benched and drained.

4. All constructed severe slopes shall be designed by a North Carolina registered professional engineer. For constructed severe slopes greater than eight (8) feet in height, inspection and a stability certificate are required by a North Carolina registered professional engineer with geotechnical expertise sufficient to perform the inspection and stability analysis. At a minimum the stability certificate must indicate that the slope is free of failures, including but not limited to cracks, sloughs and slippages, that adequate compaction has been achieved, soil should remain in its original configuration and that temporary or permanent ground cover is provided. The stability certificate must be submitted and approved before a Certificate of Occupancy is issued. For all constructed severe slopes within proposed or existing public right-of-ways, periodic inspections and compaction reports are required by a North Carolina registered professional engineer with geotechnical expertise.

5. Slope Setback Requirements - Setback from existing adjacent property and right-of-ways lines is required for retaining walls and constructed moderate and severe slopes as indicated. For the purpose of this subsection, constructed moderate and severe slopes shall include those created for the construction of retaining walls. The setback shall be measured from and applied for both the head and the toe of the slope.

(i.) For slopes with a maximum height of five (5) feet or less the setback shall be equal to the maximum height of the slope.

(ii) For all other slopes the minimum setback shall be the greater of either five (5) feet or the maximum height of the slope minus the slopes horizontal ratio component multiplied by the maximum height of the slope, Maximum Height of Slope - (Slope Horizontal Ratio Component X Maximum Height of Slope ).

(iii.) The required setback may be reduced if a subsurface exploration analysis of the area is completed by a North Carolina registered professional engineer with geotechnical expertise and the analysis indicates that the reduction in the setback will not cause greater risk of damage to adjacent public and private properties.

*c. Fill Material.*

Unless a permit from the Department's Division of Waste Management to operate a landfill is on file for the official site, acceptable fill material shall be free of organic or other degradable materials, masonry, concrete and brick in sizes exceeding twelve (12) inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina.

*d. Ground Cover*

Whenever land-disturbing activity is undertaken on a tract, the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Provisions for a ground cover sufficient to restrain erosion must be accomplished within 14 calendar days following completion of construction or development.

*e. Allowable Disturbances.*

1. Maximum Limits of Disturbance at One Time. Land disturbance on any property with a natural average slope in excess of fifteen percent (15%) shall be limited to disturbing not more than five (5) acres at a time. Any one disturbed area must be stabilized per the requirements of the Soil Erosion and Sediment Control Standards as set forth in subsection 7-2-12 of this chapter.

(i.) An increase in the limits of disturbance allowed at one time may be granted by the Stormwater Administrator if it can be demonstrated that additional one time land disturbance is required for construction sequencing and that public health benefits specific to erosion prevention and sediment control are provided.

(ii) For the purposes of this provision, non-contiguous areas located within 1,500 feet of each other and owned and/or developed by the same person(s) shall be considered the same project.

2. For properties where Hillside, Steep Slope and/or Mountain Top Protection regulations apply, as defined in this chapter, limits on maximum allowable disturbance shall be as indicated by those applicable regulations.. For those properties where Hillside, Steep Slope and/or Mountain Top Protection regulations apply, an As-Built Record Drawing must be submitted and approved by the Stormwater Administrator prior to final inspection approval for any phase of land-disturbing activity. The As-built Record Drawings must define and indicate the amount of area which has been disturbed in the subject phase of land-disturbing activity to assure compliance with the limits of maximum allowable disturbances. The As-Built Record Drawing shall be certified, signed and sealed by a registered professional.

3. A security for re-vegetation is required for all land disturbances which will exceed 1 acre. The security shall be in the form of a construction bond or letter of credit and must be provided prior to the issuance of the Grading and Stormwater Permit. The security shall be sufficient to re-vegetate proposed disturbed areas and must be valid for one (1) year from the issuance of the permit and be updated throughout the process.

*f. Borrow and Waste Area*

1. When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by the Department's Division of Waste Management shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land-disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

2. A formal plan shall include a soil volume balance calculation and indicate if there will be borrowed or waste fill material used. If borrowed or waste fill material is generated an approved land disturbance permit must be secured for the borrow or waste material site prior to initiation of any land disturbing activity, unless the site is not excluded by the mining or landfill act.

*g. Grading along property lines.*

For land disturbing activities for which a formal erosion and sedimentation control plan is required by subsection 7-12-2 of this chapter, no grading activity or land disturbance may be conducted within ten feet of any property line unless written acknowledgement of the grading activity or land disturbance by the adjacent property owner and approval of the planning and development director have been received. Grading for access point and utility extensions shall be exempt from this subsection.

*h. Grading activity in the buffer zone – (Non Aquatic Buffer Zone)*

When developing a site, the developer shall have two options regarding land disturbance in any required buffer:

1. Land disturbance is prohibited in a strip with a minimum width of 15 feet along the side and rear property lines for sites over one acre; or

2. Land disturbance is permitted in the buffer area and the developer is required to plant trees and shrubs which are 25 percent larger than normally required in order to reestablish quickly a visual buffer.

3. Utilities should be installed along the edge of the required buffer area and cross perpendicular to the buffer area. Land disturbance in the required buffer area shall not exceed a 2:1 slope. Developers will be encouraged to provide as gradual a slope as possible in the buffer area to provide increased soil stability and a better planting environment for buffer trees and shrubs.

i. The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan

(3) *Design and Performance Standards:*

a. *Design Storm Protection*

Except as provided in subsection 12-7-2(F)(3)c.2. of this ordinance, erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the calculated maximum peak rate of runoff from the ten-year storm. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices", or other acceptable calculation procedures. Provided however, if deemed necessary by Stormwater Administrator, due to critical downstream resources or critical areas identified within watershed master plans, erosion control measures for such sites or specific measures on a site shall be designed for the twenty-five (25) year storm.

b. *Innovative Measures*

Erosion and sedimentation measures applied alone or in combination to satisfy the intent of this section are acceptable if they are sufficient to prevent adverse secondary consequences. Innovative techniques and ideas will be considered and may be used following approval by the Stormwater Administrator if it can be demonstrated that such techniques and ideas are likely to produce successful results.

c. *High Quality Water Zone*

In High Quality Water (HQW) zones the following design standards shall apply:

1. Uncovered areas in HQW zones shall be limited at any time to a maximum total area of twenty acres within the boundaries of the tract. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director.

2. Erosion and sedimentation control measures, structures, and devices within HQW zones shall be planned, designed and constructed to provide protection from the runoff of the twenty-five year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or any generally

recognized organization or association.

3. Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70% for the 40 micron (0.04 millimeter) size soil particle transported into the basin by the runoff of that two year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

4. Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two horizontal to one vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

5. Ground cover sufficient to restrain erosion must be provided for any portion of a land-disturbing activity in a HQW zone within (14) calendar days following completion of construction. When construction activity has ceased in a particular tract of a larger development, permanent ground cover must be accomplished within fourteen (14) calendar days from the date of the last land disturbing activity.

(4) Storm Water Outlet Protection

a. *Intent*

Stream banks and channels downstream from any land disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land disturbing activity.

b. *Performance standard*

Persons shall conduct land-disturbing activity so that the post construction velocity of the 10-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:

1. The velocity established by the Maximum Permissible Velocities Table as shown below;  
or
2. The velocity of the ten-year storm runoff in the receiving watercourse prior to development.

If condition 1. or 2. above cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the "prior to development" velocity by 10%.

Maximum Permissible Velocities Table	
	Maximum Permissible Velocity

Material	feet per second	meters per second
Fine sand (noncolloidal)	2.5	0.8
Sandy loam (noncolloidal)	2.5	0.8
Silt loam (noncolloidal)	3.0	0.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

Source - Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

*c. Acceptable Management Measures*

Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The City recognizes that the management of stormwater runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives, while not exhaustive, are to:

1. Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
2. Avoid increases in storm water discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high velocity paved sections;
3. Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities



to the point of discharge;

4. Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and

5. Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.

d. *Exceptions*

These requirements shall not apply where it can be demonstrated to the City that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

(5) *Grading Without an Approved Development Plan*

Land disturbance without an approved development plan, defined as the grading of a site for which no development plan has been approved, is permitted in all districts except the residential districts and the River District if certain requirements are met. These requirements are as follows:

a. A landscape plan as well as an erosion control plan must be approved by the city prior to initiation of the land disturbance activity;

b. The landscape plan must show the location of existing trees to be preserved and the location and type of any required buffer yard trees and street trees which will remain (see section 7-11-2);

c. The determination of the type of buffer required shall be based upon the most intense development permitted in the zoning district in which the project being graded is located;

d. All required trees must be planted within 30 days of completion of the land disturbance activity or within 12 months of the date the land disturbance activity was initiated, whichever is less. This time period may be extended through the posting of a financial guarantee as provided for in section 7-11-2; and

e. A permanent ground cover shall be established on the site within 14 calendar days of completion of the land disturbance activity unless completion occurs outside a growing season, in which case a temporary ground cover shall be applied within 14 calendar days. No ground cover shall be required for bare rock.

f. No grading and stormwater permits shall be issued prior to review and approval of the landscape plan by the city.

(6) *Operations In Lakes or Natural Watercourses.*

Land disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall minimize the extent and duration of disruption of the stream channel. Where relocation of a stream forms an essential part of the proposed activity, the relocation shall minimize unnecessary changes in the stream flow characteristics.

(7) *Access and Haul Roads*

Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity

(8) Additional Measures

Whenever the City determines that significant erosion and sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take additional protective action.

(9) Existing Uncovered Areas

a. All uncovered areas existing on the effective date of this chapter which resulted from land-disturbing activities, and are subject to continued accelerated erosion, and are causing off-site damage from sedimentation, shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation.

b. The city shall serve upon the landowner or other person in possession or control of the land a written notice. The notice to comply shall be sent by registered or certified mail, return receipt requested, or other means provided in GS 1A-1, Rule 4. The notice will set forth the measures needed to comply and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the authority serving notice shall take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits of compliance.

c. The city reserves the right to require preparation and approval of an erosion control plan in any instance wherein extensive control measures are required.

d. This section shall not require ground cover on cleared land forming the future basin of a planned reservoir.

e. No fee shall apply to work required under this subsection.

(10) Responsibility for Installation, Operation, and Maintenance of Temporary and Permanent Soil Erosion and Sedimentation Control Measures

a. During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent soil erosion and sedimentation control measures as required by the approved plan, by any provision of this subsection, by any order adopted pursuant to this section, or any provision of the North Carolina Sediment Pollution Control Act. After site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent soil erosion and sedimentation control measures, except those installed within a road or street right-of-way or easement accepted for maintenance by a government agency. When sediment is transported onto a public road surface, the road shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner.

b. Cost of clean-up by City: If the City must clean-up off-site sedimentation or mitigate other erosion related public safety and environmental hazards, the person in violation will be charged for the cost of the cleanup in addition to the civil penalty. The cleanup cost shall include personnel wages, equipment usage, and related administrative overhead. If the violator does not pay for the cleanup cost, revoked permits shall not be reissued and a lien shall be placed on the violator's property until the cost is recouped by the City.

c. The City, may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57 (3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief.

**(g) Post Construction Stormwater Control**

**(1) Standards for Stormwater Quantity Control.**

All development and redevelopment to which this subsection applies shall comply with the standards of this subsection. The design of facilities to accomplish these standards shall be based on procedures contained in the SWM Design Manual or approved by the Stormwater Administrator. The minimum "post-construction" stormwater control requirements included in the Stormwater Management Plan shall provide management measures necessary to accomplish the following:

a. Limit the 2-year and 10-year developed peak discharge rates to pre-developed peak discharge rates using a duration of 24 hours with a SCS Type II design storm and pass the 50-year, 24-hour storm event. Provided that the Stormwater Administrator may require control to pre-development rates for the 25-year, 24-hour storm, if by using existing watershed master plan analysis it is found that that additional flow reduction is required to protect downstream properties, natural and built drainage facilities due to the additional peak flows from the 25-year 24-hour storm event

b. Provide extended detention for the difference between the pre-development and post development volume of the 2-yr-24-hr SCS Type II design storm. The increase in volume must be detained between 24-hours to 120-hours. Provided that the Stormwater Administrator may require volume control for the difference between the pre-development and post development volume of the 25-yr 6-hr storm if by using existing watershed master plan analysis it is found that that additional volume reduction is required to protect downstream properties, natural and built drainage facilities due to the additional run-off volumes from the 25-yr 6-hr storm event.

c. The requirements, or portions thereof, of items (a.) and (b.) above may be altered or waived by the Stormwater Administrator if it can be shown by detailed engineering calculations and analysis which are acceptable to the Stormwater Administrator that the rate and volume of stormwater run-off from the proposed development would have no negative impact on downstream property, infrastructure and natural systems or by meeting the required provisions an increase in downstream flood peaks would occur due to timing of peak discharges. In any case an alteration or waiver shall only be granted after a written request is submitted by the applicant containing descriptions, drawings, and any other information that is necessary to evaluate hydrologic and hydraulic responses. A separate written waiver request shall be required if there are subsequent additions, extensions, or modifications which

would alter the approved stormwater runoff characteristics. The waiver shall be submitted and reviewed with the development Stormwater Management Plan.

(2) Standards for Stormwater Quality Control

All development and redevelopment to which this subsection applies shall comply with the standards of this subsection. The design of facilities to accomplish these standards shall be based on procedures contained in the SWM Design Manual or approved by the Stormwater Administrator. The minimum “post-construction” stormwater control requirements included in the Stormwater Management Plan shall provide management measures necessary to accomplish the following:

- a. Control and treat the stormwater run-off leaving the site from the first one inch of rain. The volume of run-off from the first inch of rain must be detained between 48-hours to 120-hours.
- b. All structural stormwater treatment systems used to meet the requirements of the program shall be designed to have a minimum of eighty-five percent (85%) average annual removal for Total Suspended Solids.
- c. General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H.1008(c)
- d. *Built-Upon Area Aquatic Setback Zones*
  1. In a zone within 30 feet of jurisdictional perennial or intermittent surface waters, herein defined as “Zone A”, no Built-Upon Area shall be permitted.
  2. In a zone between 30 feet and 50 feet of jurisdictional perennial or intermittent surface waters, herein defined as “Zone B”, Built-Upon Area shall be prohibited except as follows:
    - (i.) Compacted, hardened or other impervious surfaces for the construction of Greenways and/or non-motorized vehicle paths shall be allowed in “Zone B”
    - (ii.) All other Built-Upon Area allowed in “Zone B” is limited to a maximum of ten percent (10%) of the total area of the Aquatic Setback Zones within the tract.
  3. To determine the area of “Zone A” and “Zone B”, the distance shall be measured horizontally from the top of bank to the landward side of the watercourse.
  4. The Stormwater Administrator may support or grant a waiver of the provisions of 1. and 2. above, provided that it can be proven that a Hardship exists, that there are “no practical alternatives” or that the provision would constitute “a taking”. If a wavier is granted for this provision, additional best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality. For the purpose of this provision “no practical alternative” and “a taking” is described as follow:
    - (i.) No practical alternative exists if the basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality.
    - (ii.) No practical alternative exists if the use cannot practically be reduced in size or

density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality.

(iii.) A taking exists if this provision would require owners to grant public access to the property.

(iv.) A taking exists if this provision would prohibit use of the entire parcel so that the landowner cannot make economically viable use of the property.

e. The approval of the grading and stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

### (3) Standards for Stormwater Control Measures

a. *Stormwater Management Design Manual, (SWM Design Manual):* To assist in the design and evaluation of stormwater management facilities in the City of Asheville, a SWM Design Manual is adopted. Recommended design procedures and criteria are presented for conducting evaluations of practices. Although the intention of the manual is to establish uniform design practices, it neither replaces the need for engineering judgment nor precludes the use of information not presented. Other accepted engineering procedures may be used to evaluate practices if approved by the Stormwater Administrator.

1. If the specifications or guidelines of the SWM Design Manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the SWM Design Manual.

2. If the standards, specifications, guidelines, policies, criteria, or other information in the SWM Design Manual are amended subsequent to the submittal of an application for approval pursuant to this ordinance but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this ordinance with regard to the application.

3. The SWM Design Manual may be updated and expanded from time to time, based on advancements in technology and engineering, improved knowledge of local conditions, or local monitoring or maintenance experience. Prior to amending or updating the SWM Design Manual, proposed changes shall be generally publicized and made available for review, and an opportunity for comment by interested persons shall be provided.

b. *Evaluation According to Contents of the SWM Design Manual* - All stormwater control measures and stormwater treatment practices (also referred to as Best Management Practices, or BMPs) required under this section shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the Stormwater Management Design Manual. The Stormwater Administrator shall determine whether they will be adequate to meet the requirements of subsection 7-12-2.

c. *Determination of Adequacy; Presumptions and Alternatives* - Stormwater treatment practices that are designed, constructed, and maintained in accordance with the criteria and specifications in the SWM Design Manual will be presumed to meet the minimum water

quality and quantity performance standard of subsection 7-12-2. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the SWM Design Manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this section. The Stormwater Administrator may require the applicant to provide such documentation, calculations, and examples as necessary to determine whether such an affirmative showing is made.

(4) *Additional Standards for Special Situations*

a. Trout Waters—In addition to the standards for stormwater handling set out in the Design Manual, development and redevelopment that drains in whole or part to class TR waters shall design and implement the best stormwater practices that do not result in a sustained increase in the receiving water temperature and allow on-site stormwater treatment devices such as infiltration areas, bio-retention areas, and level spreaders as added controls, while meeting the other requirements of this section.

b. Nutrient Sensitive Waters—In addition to the standards for stormwater handling set out in the SWM Design Manual, development and redevelopment that drains in whole or part to class nutrient sensitive waters (NSW) waters shall design and implement the best stormwater practices that reduce nutrient loading, implement a nutrient application management program for both inorganic fertilizer and organic nutrients to reduce nutrients entering water of the state, while still meeting the other requirements of this section.

(5) *Locations and Dedication of BMPs, Facilities and Improvements* –

a. All BMPs shall be located outside of public right-of-ways unless public benefit can be proven and location of the stormwater management facility within public right-of-ways is approved by the Stormwater Administrator.

b. The City of Asheville may accept dedication of any existing or future BMPs and stormwater management facility for maintenance, provided such facility meets all the requirements of this section and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance. An arrangement for funding costs associated with future maintenance of the BMP or stormwater management facility may be mandated by the City prior to acceptance of the facility. In no way shall the City be required to accept maintenance of any BMP or stormwater management facility.

(6) *General Standards for Operation, Maintenance and Post Construction Inspection of BMPs by Owner:*

a. *Function of BMPs as Intended* - The owner of each structural BMP installed pursuant to this section shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the structural BMP was designed.

b. *Annual Maintenance Inspection and Report by Owner* - The person responsible for maintenance of any structural BMP installed pursuant to this section shall submit to the Stormwater Administrator an inspection report from a qualified registered North Carolina

professional engineer or landscape architect performing services only in their area of competence. The inspection report shall contain all of the following:

1. The name and address of the land owner;
2. The recorded book and page number of the lot of each structural BMP;
3. A statement that an inspection was made of all structural BMPs;
4. The date the inspection was made;
5. A statement that all inspected structural BMPs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this section; and
6. The original signature and seal of the engineer or landscape architect.

(7) Operation and Maintenance Agreement by Owner

a. Prior to the conveyance or transfer of any lot or building site to be served by a structural BMP pursuant to this section, and prior to issuance of any Certificate of Occupancy for development or redevelopment, requiring a structural BMP pursuant to this section, the applicant or owner of the site must execute an operation and maintenance agreement, which shall bind the parties thereto and all subsequent owners, successors and assigns, of the site, portions of the site, and lots or parcels served by the structural BMP. Until the transference of all property, sites, or lots served by the structural BMP, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

b. The operation and maintenance agreement shall require the owner or owners to maintain, repair, and, if necessary, reconstruct the structural BMP, and shall state the terms, conditions, schedule of maintenance for the structural BMP. In addition, it shall grant the City of Asheville a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural BMP. Provided however, in no case, shall the right of entry, or itself, confer an obligation on the City of Asheville to assume responsibility for the structural BMP.

c. The operation and maintenance agreement must state that if an order directing the correction, repair, replacement, or maintenance of the facility or of any portion thereof is not satisfactorily complied with within a reasonable period of time, as deemed appropriate by the Stormwater Administrator, the city may, after notice to the owner, enter the land and perform all necessary work to place the facility in proper working condition, and may assess the owner(s) of the subject property with the cost of said work, which cost shall be a lien on such property and may be collected as provided in N.C. Gen. Stat. sec. 160A-193. Notice shall be provided five calendar days prior to entry and performance of necessary work by the City. Notice shall be in writing and shall be delivered to the owner by hand delivery; by certified mail, return receipt requested; or by any other means allowed by Rule 4 of the North Carolina Rule of Civil Procedure. The owners of all property served by the facility shall be jointly and severally responsible to the city for the maintenance of the facility and liable for any costs incurred by the city pursuant to said agreement, and all such properties are jointly and severally subject to the imposition of liens for said costs.

d. The operation and maintenance agreement must be approved by the Stormwater Administrator prior to final release of the grading and stormwater permit, and it shall be referenced on the final plat and shall be recorded in the Register of Deeds Office for Buncombe County, Asheville, North Carolina, at the expense of the applicant.

e. *Notice of Transfer:* If responsibility for the maintenance of the facility is transferred from one party to another a Notice of Transfer shall be submitted to the Stormwater Administrator. The Notice of Transfer must be signed by the receiving party and notarized. The Notice shall contain the following acknowledgements:

1. Acknowledgement that the new party has received a copy of the Operations and Maintenance.
2. Acknowledgement that the receiving party shall continuously operate and maintain the stormwater control and management facilities and comply with the conditions set forth in the Operations and Maintenance Agreement.
3. Acknowledgement that the Operations and Maintenance Agreement shall not obligate the City of Asheville to maintain or repair any structural BMPs, and the City of Asheville shall not be liable to any person for the condition or operation of structural BMPs.

(9) *Performance Security for Installation and Maintenance*

a. The City of Asheville may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the structural BMPs are:

1. Installed by the permit holder as required by the approved stormwater management plant, and/or
2. Maintained by the owner as required by the operation and maintenance agreement.
3. Amount: The amount of an installation performance security shall be the total estimated construction cost of the BMPs approved under the permit, plus 25%.
4. Maintenance: The amount of maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the BMPs approved under the permit, a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long-term inflation.

b. *Uses of Performance Security:* The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may required of the applicant or owner in accordance with this section, approvals issued pursuant to this section, or an operation and maintenance agreement established pursuant to this section.

c. *Default:* Upon default of the owner to construct, maintain, repair, and, if necessary, reconstruct any structural BMP in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the owner to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation



performance security, the City of Asheville shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

d. *Costs in Excess of Performance Security:* If the City of Asheville takes action upon such failure by the applicant or owner, the City of Asheville may collect from the applicant or owner for the difference should the amount of the reasonable cost of such action exceed the amount of the security held.

e. Within sixty days of the final approval, the installation performance security shall be refunded to the applicant or terminated.

(10) *Notice to Owner*

a. *Deed Recordation and Indications on Plat:* The applicable operations and maintenance agreement pertaining to every structural BMP shall be referenced on the final plat and shall be recorded with the County Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement shall be referenced on an as-built record drawing and shall be recorded with the County Register of Deeds so as to appear in the chain of title of all subsequent purchases under generally accepted searching principles.

b. *Signage:* Where appropriate in the determination of the Stormwater Administrator to assure compliance with this section, structural BMPs shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

(11) *Records of Installation and Maintenance Activities:* The owner of each structural BMP shall keep records of inspection, maintenance, and repairs for at least five (5) years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.

(12) *Emergency authority.* If the city engineer determines that the condition of any stormwater management facility presents an immediate danger to the public health and safety because of an unsafe condition or improper maintenance, the city engineer shall take such actions as may be necessary to protect the public and make the facility safe. Any costs incurred by the city as a result of the city engineer's action shall be assessed against any or all of the owners of property served by said facility who shall be jointly and severally liable for all said costs and whose property shall jointly and severally be subject to a lien for said costs which may be collected as provided in N.C. Gen. Stat sec. 160A-193.

**(h) Inspections and Violations**

(1) *City of Asheville Inspections and Investigations*

a. Inspections and inspection programs by the City of Asheville may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspection; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws during or post construction. Inspections may include, but are not limited to, compliance checks of the approved plan and the grading and stormwater permit, reviewing for compliance with the standards of the SWM Design Manual, reviewing land disturbing activity and plan

effectiveness. reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs; and evaluating the condition of BMPs. Notice of the right to inspect shall be included in the approval of each permit application.

b. The city shall have the power to conduct an investigation as it may reasonably deem necessary to carry out its duties as prescribed in this section 7-12-2 and, for this purpose, to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any activity regulated in this section. No person shall refuse entry or access to any authorized representative or agent of the city, who requests such entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such representative while in the process of carrying out his/her official duties. No person shall willfully resist, delay, or obstruct an authorized representative of the city while the representative is inspecting or attempting to inspect a activity under this section 7-12-2.

c. If the owner or occupant or any property refuses to permit such inspection, the Stormwater Administrator shall proceed to obtain an administrative search warrant pursuant to G.S.15-27.2 or its successor. No person shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out his or her official duties.

d. The City, shall also have the power to require written statements, or filing of reports under oath, with respect to pertinent questions relating to activity under this section 7-12-2.

## *(2) Required Private Inspections During Construction*

a. For sites with ten thousand (10,000) square feet of disturbance or greater, a contract is required between the person financially responsible and a licensed professional for erosion and sediment control plan compliance checks. The inspection reports are to be filed by a person of equivalent licensure to that of the designer of the approved erosion control plan. The licensed professional shall conduct weekly inspections and file reports for all sites where Hillside, Steep Slope and/or Mountain Top Protection regulations apply, as defined in this chapter and bi-weekly for all other sites as defined above. A grading and stormwater permit will not be issued for the land disturbing activity until a notarized Certificate of Inspection Agreement indicating the existence of contract has been received and approved by the Stormwater Administrator. Falsification of reports shall constitute a Violation of this section. Standardized Certificate of Inspection Agreements, reporting forms and reporting process will be provided by the City

b. Development or redevelopment required to comply with the provisions for post construction stormwater control, a contract is required between the person financially responsible and a licensed professional for post construction stormwater control compliance checks. The inspection reports are to be filed by a person of equivalent licensure to that of the designer of the approved stormwater management plan. The licensed professional shall conduct bi-weekly inspections and file reports for all sites. The licensed professional shall also inspect installation of all stormwater management facilities and BMPs. A grading and stormwater permit will not be issued for the development or redevelopment until a notarized Certificate of Inspection Agreement indicating the existence of contract has been received and approved by the Stormwater Administrator. Falsification of reports shall constitute a Violation of this section Standardized Certificate of Inspection Agreements, reporting forms and reporting process will be provided by the City.

(3) *Notice of Violation:* If, through inspection, it is determined that a person has failed to comply with either this section 7-12-2, the approved plan, the grading and stormwater permit or orders adopted or issued pursuant to this section, the City shall immediately serve a notice of violation upon that person. The notice may be served by any means authorized under N.C. Gen. Stat. sec. 1. A. 1., Rule. The notice will set forth the measures needed to comply and will state the time within such measures must be completed and warn that failure to correct the violation within the time period shall result in the assessment of a civil penalty or other enforcement action. Any person who fails to comply within the time specified is subject to civil and criminal penalties and other enforcement action. In determining the measures required and the time allowed for compliance, the city shall take into consideration the economic feasibility, technology, the quantity of work required, and shall set reasonable and attainable time limits of compliance.

(4) *Stop Inspections Order:* For development, redevelopment and land disturbing activity, which is required to comply with the provisions of this section, if a Notice of Violation has been issued for non-compliance with this section, the Stormwater Administrator may send a copy of the Notice to the Office of the Director of Building Safety. Once the Notice is received by the Office of the Director of Building Safety a Stop Inspection Order shall be issued for the development, redevelopment or land disturbing activity by Building Safety and all inspection approvals for the Building Permit activity and all other permitted activity shall be suspended. Once the violation has been cured and the development, redevelopment and land disturbing activity is in compliance a notice shall be sent to the Office of the Director of Building Safety and the Stop Inspection order shall be removed.

(5) *Authority to revoke or suspend.* The Director of Engineering shall have the authority to suspend or revoke any grading and stormwater and to issue a stop work order for any violation of the stormwater provisions of this section, the SWM Design Manual; any stormwater discharge permit, any state, federal, or local law applicable to the work or changes in site characteristics upon which plan approval and permit issuance was based.

**(I) Prohibition, Detection and Elimination of Illicit Connections, Illicit Discharges and Improper Disposal to the Stormwater System**

(1) *Connections:* It is unlawful for any person to connect any pipe, open channel, or any other conveyance system that discharges anything except stormwater or unpolluted water, which is approved by the Stormwater Administrator, into receiving waters. Prohibited connections include, but are not limited to: flood drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic tanks.

(2) *Continuation of Illicit Connection:* It is unlawful for any person to continue the operation of any such illicit connection regardless of whether the connection is permissible when constructed. Improper connections in violation of this section must be disconnected and redirected, if necessary, to the satisfaction of the Stormwater Administrator and any other federal, state, or local agencies or departments regulating the discharge.

(3) *Illicit Discharge:* It is unlawful for any person to throw, drain, run or otherwise discharge to any component of the City of Asheville MS4 or to the Waters of the State or to cause, permit or allow to suffer to be thrown, drained, run, or allow to seep or otherwise discharge into such

system or receiving water all matter of any nature excepting only such storm or surface water as herein authorized.

(4) The Stormwater Administrator may require controls for or exempt from the prohibition provision above, the following, provided he determines they are not a significant source of pollution:

- a. Unpolluted industrial cooling water, but only under the authorization and direction of the Stormwater Administrator and appropriate NPDES permit.
- b. Water line flushing performed or required by a government agency, landscape irrigation, diverted stream flows, rising ground waters, unpolluted pumped ground waters, and unpolluted ground water infiltration as defined at 40 CFR 35.2005(20).
- c. Unpolluted pumped ground water.
- d. Discharges from portable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual car washing, dechlorinated residential swimming pool discharges, flows from riparian habitats and wetlands, and street wash water.
- e. Discharges or flows from fire fighting.
- f. Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and provided that any such discharges to the MS4 shall be authorized by the City of Asheville.

(5) Accidental Discharge: In the event of an accidental discharge or an unavoidable loss to the City of Asheville MS4 of any pollutant, the person concerned shall inform the City of Asheville as soon as possible, but not to exceed 24 hours, of the nature, quantity and time of occurrence of the discharge. The person concerned shall take immediate steps to contain the waste, treat the waste or other actions to minimize affects of the discharge on the MS4 and receiving waters. The person shall also take immediate steps to ensure no recurrence of the discharge.

(6) Detection and Elimination of Illicit Connections, Illicit Discharges and Improper Disposal to the Stormwater System.

- a. The Stormwater Administrator shall take appropriate steps to detect and eliminate illicit connections to the City of Asheville MS4, including the adoption of a program to screen illicit discharges and identify their source or sources.
- b. The Stormwater Administrator shall take appropriate steps to detect and eliminate improper discharges, including program to screen for disposal and programs to provide for public education, public information, and other appropriate activities to facilitate the proper management and disposal of used oil, toxic materials and household hazardous waste.
- c. Where such connections exist in violation of this section and said connection were made prior to adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one (1) year following the effective date of this section. However, the one-year grace period shall

not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.

d. Where it is determined that said connection:

1. May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat, or
  2. Was made in violation of any applicable regulation or ordinance, other than this section; the Stormwater Administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the Stormwater Administrator shall take into consideration: the quantity and complexity of the work; the consequence of delay; the potential harm to the environment, to the public health, and to public and private property, and the cost of remedying the damage.
- (7) Spills: Spills or leaks of polluting substances released, discharged to, or having the potential to be released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their preexisting condition.
- (8) Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the fire chief of the release or discharge, as well as making any required notifications under state and federal law. Notification shall not relieve any person of any expenses related to the restoration, loss damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by state or other law.
- (9) Nuisance: Illicit discharges and illicit connections which exist within the City's jurisdiction and extra-territorial jurisdiction are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or safety and are found, deemed, and declared to be public nuisances and shall be abated.

(10) Monitoring and Inspections Related to Illicit Discharge Program

- a. Water Quality Monitoring: The Stormwater Administrator shall monitor the quantity of, and the concentration of pollutants in stormwater discharges from the areas and/or locations designated in the City of Asheville SWMP.
- b. General Inspection Requirements: The Stormwater Administrator, bearing proper credentials and identification, may enter and inspect all properties for regular inspections, periodic investigations, monitoring, observation measurement, enforcement, sampling and testing, to effectuate the provisions of this section that the SWMP program. The Stormwater Administrator shall duly notify the owner of said property or the representative on site and the inspection shall be conducted at reasonable times. Inspection reports shall be maintained in a permanent file located in the Stormwater Administrator's office.
- c. Administrative Inspection Warrant: Upon refusal by any property owner to permit an inspector to enter or continue an inspection, the inspector shall terminate the inspection or

confine the inspection to areas concerning which no objection is raised. The inspector shall immediately report the refusal and the grounds to the Stormwater Administrator. The Stormwater Administrator shall promptly seek an administrative inspection warrant consistent with the laws of the State of North Carolina to complete the inspection.

d. *Emergency Inspections:* In the event that the Stormwater Administrator or the designee reasonably believes that discharge from the property into the City of Asheville MS4 may cause an imminent and substantial threat to human health or the environment, the inspection may take place at any time and without notice to the owner of the property or a representative on site. The inspector shall present proper credentials upon reasonable request by the owner or representative.

**(J) Acronyms.**

(1) BMP	Best management practice
(2) CFR	Code of Federal Regulations
(3) cfs	Cubic feet per second
(4) CWA	Clean Water Act
(5) DWQ	North Carolina Division of Water Quality
(6) GIS	Geographic information system
(7) HQW	High quality water
(8) LID	Low impact development
(9) MEP	Maximum extent practicable
(10) MS4	Municipal separate storm sewer system
(11) NC	North Carolina
(12) NCAC	North Carolina Administrative Code
(13) NCDENR	North Carolina Department of Environment and Natural Resources
(14) NCDOT	North Carolina Department of Transportation
(15) NCEMC	North Carolina Environmental Management Commission
(16) NCGS	North Carolina General Statutes
(17) NPDES	National Pollutant Discharge Elimination System
(18) NRCS	National Resource Conservation Service
(19) NSW	Nutrient sensitive waters
(20) SCS	Soil Conservation Service
(21) SL	State law
(22) SWM	Stormwater management
(23) SWMP	Stormwater Management Program
(24) TMDL	Total daily maximum load
(25) TR	Trout waters
(26) USDA	United States Department of Agriculture
(27) USGS	United States Geological Survey

(9) *More restrictive rules shall apply:* This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare, shall control.

**Section 4:** *Severability.* The provisions of this Chapter are declared to be severable, and if any article, section, sentence, clause, or phrase of this chapter, shall for any reason be held invalid or unconstitutional, or if the application of this Chapter to any person or circumstances is held invalid or unconstitutional, such decisions shall not affect the validity of the remaining section, sentences, clauses, and phrases of this Chapter.

**Section 5:** *Invalidity.* That if any section, subsection, sentence, clause, or phrase of this section is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portion of this section. The City Council hereby declares that it would have passed this section and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

**Section 6:** *Conflict.* That all ordinances and clauses in conflict herewith be and are hereby repealed to the extent of such conflict.

**Section 7:** *Full force and effect.* The provisions of this subsection 7-2-12 shall be in full force and effect upon adoption. All development and redevelopment projects for which complete and full development applications were submitted prior to the effective date of this section shall be exempt from complying with all provisions of this section dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions including but not limited to illicit discharge provisions.

Read, approved and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

Approved as to form:

\_\_\_\_\_  
City Attorney

## ORDINANCE NO. \_\_\_\_\_

### ORDINANCE AMENDING CHAPTER 7, ARTICLE XVIII, OF THE UNIFIED DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE PERTAINING TO ENFORCEMENT

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

**Section 1:** Section 7-18-2 (Penalties for violations) of Chapter 7 of the Unified Development provisions of the Code of Ordinances of the City of Asheville is hereby repealed in its entirety and a new section 7-18-2 is inserted as follows:

Sec. 7-18-3. *Penalties for violations.*

(a). *Liabilities for violations.* Pursuant to N.C. Gen. Stat. sec. 160A-175, any person who erects, constructs, reconstructs, alters, repairs, converts, or maintains any building, structure, sign or sign structure or develops, grades or otherwise alters property in violation of this chapter, and any person who uses any building, structure, sign or sign structure or land in violation of this chapter shall be subject to civil and criminal penalties in accordance with this article.

(b) *civil penalties.*

(1) *General.* Violation of this chapter, except violations of section 7-12-2 and Article XIII and IV, shall subject the offender to a penalty to the amount of \$100.00 per day for each day the violation continues, to be recovered by the city in a civil action in the nature of debt if the offender does not pay the penalty within the prescribed period of time after he or she has been cited for the violation.

(2) *Stormwater, Soil Erosion and Sedimentation Control and Illicit Discharge and Connection.*

a. *Violation of soil erosion and sedimentation regulations:* Any person who violates any of the provisions of the soil erosion and sedimentation control requirements of section 7-12-2 and/or who initiates a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be subject to a civil penalty. The maximum civil penalty for a violation is five thousand dollars (\$5,000). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.

b. *Violation of stormwater and control and illicit discharge and connection regulations:* Any person who violates the stormwater and control and illicit discharge and connection regulations of section 7-12-2, shall be subject to a civil penalty. The maximum civil penalty for a violation is twenty-five thousand dollars (\$25,000). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.

c. *Assessment of Penalty:* The amount of the civil penalty shall initially be determined and assessed by the Stormwater Administrator in strict accordance with the table of penalties as set forth below. For violations of the soil erosion and sedimentation regulations, the Stormwater Administrator, in determining the amount of the penalty, shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage, the amount of money the



violation saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in compliance or failing to comply with the soil erosion and sedimentation control regulations. For violations of the stormwater and control and illicit discharge and connection regulations, the Stormwater Administrator shall consider the severity of the impact to public/private property, natural environment and the public welfare.

Table of Penalties										
Erosion and Sediment Control										
	Grading without permit	Site/Plan not in accordance with approved plan	Failure to maintain erosion control measures	Offsite Sedimentation	Buffer zone violation	Graded slopes or fills not in compliance	Lack of ground cover	Improper fill material	Failure to file/ falsification of inspection report	Other Violations of Erosion and Sediment Laws
Immediate Fine	\$100 per 2,000 SF disturbed max of \$5,000 NOV Issued	NOV Issued	NOV Issued	Slight-\$0 - \$500 Moderate \$501-\$2000 Severe \$2001 - \$5000 NOV Issued	\$100 per 5 SF disturbed, max of \$5,000, NOV Issued	NOV Issued	NOV Issued	NOV Issued	\$2000 for falsification of report	Possible \$0-\$5000
On Going Violation (Failure to Comply with NOV)	Per day penalty equal to or greater than immediate penalty	\$500 per measure not installed correctly or \$1000 per measure not installed, max of \$5000 (every 100 L.F. of silt fence or diversion shall be counted as 1 measure)	\$500 per measure not maintained correctly , max of \$5000 (every 100 L.F. of silt fence or diversion shall be counted as 1 measure)	Per day penalty equal to or greater than immediate penalty	Per day penalty equal to or greater than immediate penalty	\$100 per 100 SF not compliant max of \$5,000	\$100 per 100 SF not compliant max of \$5,000	\$0-\$5000 (To be based on amount of improper fill and possible hazard for failure or leeching of pollutants)	\$200 per reporting period for each report not filed	Possible \$0-\$5000
Willful Violations	A Willful violation shall be established for repeat offenses by same party or refusal to comply with Erosion Control Laws. Penalties for willful violations shall be maximum allowed and pursuit of criminal prosecution.									
Stormwater and Illicit Discharges										
Maximum amount of fine shall be \$25,000 per day per violation. Amounts for violations shall be based on severity of impacts to public/private property, natural environment and public welfare.										
Willful Violations	A Willful violation shall be established for repeat offenses by same party or refusal to comply with Erosion Control Laws. Penalties for willful Violations shall be maximum allowed and pursuit of criminal prosecution.									

d. *Notice of Civil Penalty Assessment:* The Stormwater Administrator shall provide notice of the civil penalty amount and basis for assessment to the person assessed. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment, within thirty (30) days after receipt of the notice of assessment, by written appeal.

e. *Penalty Determination Referred to the Erosion Control Plan Review Committee:* The Stormwater Administrator shall, if there are insufficient facts and evidence from which to apply the guidelines from the table of penalties as set forth below to arrive at a penalty assessment, convene a hearing of the Erosion Control Plan Review Committee (Committee), for the purpose of determining and assessing the amount of penalty. If a referral is made to the Committee, the Stormwater Administrator shall also provide notice to the aggrieved party of the date and time of the hearing before the Committee. Further, the aggrieved party shall have the same rights as if the hearing was convened pursuant to an appeal made by the aggrieved party.

f. *Appeal to Erosion Control Plan Review Committee:* Any aggrieved party may file an appeal of the penalty assessment made by the Stormwater Administrator to the Committee within thirty (30) days of receipt of the penalty assessment. The appeal must be submitted in writing to the Stormwater Administrator and shall specify the grounds for appeal. The Stormwater Administrator shall forthwith transmit to the Committee all documents constituting the record on

which the decision appeal was taken. A hearing for the appeal shall be held within thirty (30) working days after the receipt of the written appeal. The hearing shall be quasi-judicial with the right of the aggrieved party to have counsel present, to confront and examine witnesses and to review all documents. In the absence of an appeal to the Committee, the penalty assessment of the Stormwater Administrator shall be final. The Committee may reverse or affirm, wholly or partly, or may modify the penalty appealed from along with the associated findings made therein to support the penalty. To this end, the Committee shall have all the powers of the Stormwater Administrator from whom the appeal is taken.

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g. *Appeal to Superior Court:* Every decision of the Committee shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 10 days after the decision of the Committee is filed in the office of the Stormwater Administrator or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Committee at the time of its hearing of the case, whichever is later. The decision of the Committee may be delivered to the aggrieved party either by personal service or by registered mail or certified mail returned receipt requested. An appeal may be taken from the Committee within ten (10) days of receipt of the written decision to the Buncombe County Superior Court in the nature of a writ of certiorari. The appeal shall be limited to the record before the Committee.

h. *Failure to Appeal and/or Pay:* Any civil penalty assessed a person who violates the provisions of section 7-12-2 of this chapter shall be recovered by the city in a civil action in the nature of debt, to be brought in the Buncombe County Superior Court if the offender fails to give notice of timely appeal and fails to pay the penalty within the prescribed period of time after he or she has been cited for the violation.

i. *Credit of Civil Penalties:* Civil penalties collected pursuant to this ordinance shall be credited to the Civil Penalty and Forfeiture Fund

(3) *Signs.* Violations of Article XIII of this chapter shall subject the offender to a civil penalty in the amount of \$50.00, to be recovered by the city in a civil action in the nature of debt if the offender does not pay the penalty within the prescribed period of time after he or she has been cited for the violation. In the case of a continuing violation, each 72-hour period during which the violation continues to exist shall constitute a separate violation.

(c) *Criminal penalties.*

(1) *Soil erosion and sedimentation control.* Any person who knowingly or willfully violates the soil erosion and sedimentation control provisions in section 7-513 or section 7-12-2 of this chapter, or who initiates or continues a land-disturbing activity for which an erosion control plan is required other than in accordance with the terms, conditions and provisions of an approved erosion control plan, shall be guilty of a Class 2 misdemeanor, pursuant to N.C. Gen. Stat. sec. 113a-64(b), which may include a fine not to exceed \$5,000.00.

(2) *Flood protection.* Any person who violates any of the provisions of section 7-5-12 or section 7-12-1 of this chapter shall be guilty of a Class I misdemeanor. Failure to remove any artificial obstruction or enlargement or replacement thereof that violates any of the provisions of section 7-12-1 shall constitute a separate violation for each ten days that such failure continues after written notice from the city.

(3) *Subdivisions.* Any person who, being the owner or agent of the owner of any land located within the planning and regulations jurisdiction of the city, subdivides his/her land in violation of the requirements of section 7-15 of this chapter or who transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the requirements of this chapter and recorded in the Office of the Register of Deeds for Buncombe County shall be guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer of other document used in the process of selling or transferring land shall not exempt the transaction from this penalty.

(d) *Each day a separate violation.* Except as indicated in subsection 7-18-29(b) (3) above, each day that a violation continues shall constitute a separate and distinct violation or offense.

**Section 2: *Invalidity:*** That if any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

**Section 3: *Conflict:*** That all ordinances and clauses in conflict herewith be and are hereby repealed to the extent of such conflict.

**Section 4: *Full force and effect.*** Except where herein specified, this Ordinance shall be in full force and effect upon adoption.

Read, approved and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
City Clerk

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Mayor

Approved as to form:

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City Attorney